

Message Text

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AMEMBASSY LIMA

C O N F I D E N T I A L QUITO 1075

EXDIS

E.O. 11652: GDS

TAGS: EFIS, PFOR, EC, PLOS, US

SUBJ: TUNA DISPUTE: PROPOSAL OF US/ECUADOREAN TALKS

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1. EMBASSY WELCOMES PROSPECT OF VISIT BY SENIOR US REPRESENTATIVE, SUCH AS JOHN NORTON MOORE, TO INITIATE GOVERNMENT-TO-GOVERNMENT DISCUSSIONS. AN OFFICIAL VISIT OF THIS TYPE WOULD PROBABLY BE WELL RECEIVED BY THE ECUADOREANS, AND AT A MINIMUM WOULD ENABLE THE US TO PROBE GOE INTERPRETATION OF ITS LAWS ON CONSERVATION, REGIONAL MANAGEMENT OF FISHING, AND ACCESS TO ECUADOREAN-CLAIMED WATERS BY FOREIGN VESSELS. SUCH TALKS COULD ALSO PROVIDE A USEFUL FRAMEWORK OR UMBRELLA FOR INDUSTRY-TO-INDUSTRY TALKS. A FAVORABLE ATMOSPHERE FOR TALKS WOULD BE ESTABLISHED IF THEY WERE PRECEDED BY A DEPARTMENT STATEMENT TO THE EFFECT THAT US-FLAG FISHING VESSELS ARE FREE TO DO AS THEY PLEASE IN RESPECT TO BUYING LICENSES, SINCE THERE IS WIDESPREAD BELIEF HERE THAT DEPARTMENT'S OFFICIAL POSITION IS TO RECOMMEND AGAINST LICENSE PURCHASES BY US BOATS.

2. THERE ARE TWO TYPES OF GOVERNMENT-TO-GOVERNMENT ARRANGEMENTS THAT WE BELIEVE MIGHT BE USEFULLY DISCUSSED WITH THE ECUADOREANS SHOULD THEY SHOW SIGNS OF WISHING TO PURSUE THIS AVENUE: A CONSERVATION AGREEMENT ALONG REGIONAL LINES, OR A BILATERAL US/ECUADOREAN AGREEMENT ALONG THE BRAZILIAN

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MODEL. WE REALIZE THAT A REGIONAL AGREEMENT WOULD BE

QUITE COMPLICATED, HIGHLY LIKELY TO BE PROLONGED IN ITS NEGOTIATION, AND WOULD NOT NECESSARILY GET US OFF THE SHORT TERM HOOK OF FISHING BOAT SEIZURES DURING THE POSSIBLY PROTRACTED NEGOTIATIONS. ON THE OTHER HAND, DEPARTMENT'S POINT (REF A) "COULD INDUSTRY CONTINUE FISHING IF ALL STATES OF REGION DEMANDED SIMILAR LICENSES AND ASSOCIATION AGREEMENTS" IS A VALID ONE, AND IT SEEMS CLEAR THAT COSTS OF AN AGREEMENT WITH ECUADOR ALONE COULD BE HIGH IF INDUSTRY WERE THEN FACED WITH UNEXPECTED DEMANDS FROM OTHER PACIFIC COUNTRIES. CONSIDERATION OF A BILATERAL AGREEMENT, ALONG BRAZILIAN LINES, WOULD OF COURSE HAVE TO TAKE INTO ACCOUNT THE PRACTICAL DIFFERENCES BETWEEN STRICT CONSERVATION OF A LIMITED BOTTOM-CRAWLER RESOURCE LIKE SHRIMP AND A WIDE RANGING MIGRATORY SPECIES SUCH AS TUNA.

3. MEMBERS OF THE US/LOS DELEGATION TO THE CONFERENCE IN CARACAS PROBABLY HAVE A BETTER KNOWLEDGE OF ECUADOREAN THINKING WITH RESPECT TO REGIONAL MANAGEMENT AND CONSERVATION THAN WE HAVE. RECENT DISCUSSIONS OF THIS ISSUE HAVE ALL BEEN IN A MULTILATERAL CONTEXT. WE HAVE, HOWEVER, REVIEWED EXISTING ECUADOREAN LEGISLATION, AND IT CLEARLY ALLOWS FOR THE POSSIBILITIES OF BOTH BILATERAL AS WELL AS REGIONAL CONSERVATION AGREEMENTS, AND IN ADDITION, FOR INDUSTRY-TO-INDUSTRY AGREEMENTS WHICH WOULD PROVIDE THE WAY FOR TREATMENT OF US TUNA VESSELS IN THE SAME WAY AS THEIR OWN NATIONAL SHIPS. RELEVANT ECUADOREAN LEGISLATION IS CONTAINED IN TWO DOCUMENTS, WHICH WE RECOMMEND BE CAREFULLY SCRUTINIZED: A) QUITO A-23, MARCH 19, 1974, AND B) QUITO A-83, AUGUST 23, 1974. IN THE FIRST OF THESE, ARTICLES 3, 4, 28, 29, 51, AND 52 APPLY. THEY PROVIDE BRIEFLY THAT ECUADOR WILL LIVE UP TO INTERNATIONAL AGREEMENTS INCLUDING THOSE FOR PURPOSES OF RESEARCH, EXPLOITATION, CONSERVATION AND PRODUCTION OF BIOAQUATIC RESOURCES; THAT THE GOE WILL ENCOURAGE SCIENTIFIC RESEARCH TO ASCERTAIN THE EXTENT OF EXPLOITABLE BIOAQUATIC RESOURCES; THE GOE WILL EACH YEAR DETERMINE MAXIMUM VOLUMES, SIZES, AND SPECIES PERMITTED TO BE CAUGHT IN ACCORDANCE WITH THE FINDINGS OF SCIENTIFIC RESEARCH, TECHNICAL ESTIMATES, AND THE REQUIREMENTS OF CONSERVATION; NATIONAL COMPANIES MAY BE AUTHORIZED TO USE FOREIGN-FLAG FISHING VESSELS UNDER LEASE OR AN

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ASSOCIATION AGREEMENT WHICH WOULD PAY LICENSING FEES PRESCRIBED FOR NATIONAL-FLAG FISHING VESSELS; AND THE GOE IS AUTHORIZED TO ESTABLISH SPECIAL AREAS AND ZONES AND NATIONAL FISHING RESERVES-COVERING, FOR EXAMPLE, THE EXCLUSIVE 40-MILE ZONE. APPROPRIATE ARTICLES IN THE SECOND REFERENCE (A-83) ARE 1 AND 23. THE FIRST PROVIDES THAT THE GOE WILL FOSTER AN OPTIMUM USE OF BIOAQUATIC RESOURCES IN ORDER THAT THEY MAY BE DESTINED FOR HUMAN CONSUMPTION;

ARTICLE 23 PROVIDED THAT THE GOE WILL DETERMINE SPECIES FROM VOLUME OF CATCH PERMITTED, AREAS WHERE FISHING IS PROHIBITED, A LIMITATION FOR THE NUMBER AND TONNAGE OF VESSELS, SPECIFICATION OF THE GEAR AND METHODS USED, AND--MOST IMPORTANTLY-- "SUCH OTHER PROVISIONS DERIVING FROM THE MEASURES FOR CONSERVATION AND DEVELOPMENT BY THE GOE WHETHER SEPARATELY OR UNDER AGREEMENTS WITH OTHER STATES."

4. THERE IS THEREFORE ROOM WITHIN THE GOE'S LAWS AND REGULATIONS FOR EITHER A GOVERNMENT-TO-GOVERNMENT AGREEMENT (OF BILATERAL OR REGIONAL NATURE) OR INDUSTRY-TO-INDUSTRY AGREEMENTS WHICH WOULD SERVE OUR PURPOSES. HOWEVER, THE ECUADOREANS UNALTERABLY BELIEVE THAT QUESTIONS RELATING TO CONSERVATION OF FISHING RESOURCES WITHIN THEIR CLAIMED WATERS ARE A MATTER FOR THEIR EXCLUSIVE DETERMINATION-- WHICH, ALTHOUGH NOT PRECLUDING INTERNATIONAL OR BILATERAL AGREEMENTS, DOES NOT IMPLY THAT THE FEEL ANY OBLIGATION TO ENTER INTO SUCH AGREEMENTS.

5. WE STRONGLY RECOMMEND THAT ANY DELEGATION COMING TO QUITO READ THE PROVISIONS OF THE ECUADOREAN LAW AND REGULATION CITED (QUITOS A-23 AND A-83). WE ALSO BELIEVE THAT ANY NEGOTIATING APPROACH WE CONSIDER BE ESSENTIALLY TAILORED TO ACCOMMODATING THOSE PARTS OF ECUADOREAN FISHERIES LEGISLATION WITH WHICH WE CAN LIVE PENDING OUTCOME OF LOS CONFERENCES. ANY EFFORT TO SWAY ECUADOREANS FROM THEIR BASIC LOS CONVICTIONS WILL IN OUR VIEW BE FRUITLESS. THE ISSUE IS RATHER HOW WE CAN WORK OUR WAY AROUND GENERALLY UN-ACCEPTABLE LEGAL POSITIONS IN SUCH A WAY AS TO ENSURE AT LEAST SOME ACCESS BY OUR TUNA FLEET TO WHAT IS OTHERWISE RAPIDLY BECOMING AN EXCLUSIVE FISHERY.

6. REGARDING TIMING, FOR A VISIT BY A US DEL, WE WOULD WANT
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TO BE ABLE TO GIVE THE GOE AS MUCH NOTICE AS POSSIBLE IF ONLY BECAUSE ITS DECISION MAY NOT BE IMMEDIATE. REGARDING TIMING, THE DELEGATION SHOULD NOT COME WHILE ANY US VESSELS ARE UNDER DETENTION. AN ADDITIONAL TIMING FACTOR TO BE CONSIDERED IS THE INFORMATION REPORTED IN USUN 0464 THAT HEAD OF SOVIET LOS DELEGATION COMING HERE NEXT WEEK. AND FINALLY, IN VIEW OF THE LIKELIHOOD THAT ANY INITIAL TALKS WILL BE PURELY EXPLORATORY IN NATURE, WE RECOMMEND THAT THE SIZE OF ANY US DEL BE KEPT TO A MINIMUM.
BREWSTER

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